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May 19, 1969

Honorable Harry B. Kelton, Director
Texas National Guard Armory Board
West Austin Station
Austin, Texas 78703

Opinion No. M- 396

Re: Whether the Texas
National Guard
Armory Board can
act independently of
the State Building
Commission in the
awarding of construction
contracts on the basis
of open-market sealed
bids for armory constru-
tion and related
questions.

Dear Mr. Kelton:

Your request for an opinion asks the following
questions:

"In your opinion, can the Armory Board act
independently of the State Building Commission on
the following functions?:

"1. The development of armory construction
and related projects.

"2. The selection of a qualified registered
architect or engineer and awarding an architect-
engineer contract for design and construction super-
vision of armory and related projects.

"3. The awarding of construction contracts
on the basis of open-market sealed bids for
armory construction and related projects.

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"In the event your opinion is affirmative on any of the above functions, can the State Comptroller legally draw warrants, payable from funds in the State Treasury, in payment of such services and/or contracts?"

The powers of the State Building Commission, in regard to State building projects, are prescribed in Article 678f, Vernon's Civil Statutes, known as the State Building Construction Administration Act. The purpose of said act is set out in Section 1 as follows:

"The purpose of this Act is to provide for the orderly planning of buildings constructed by the State, to provide for adequate inspection in the State's interest of building construction work in progress, and to provide for reasonably accurate projections of building program requirements, and estimates of the cost of proposed projects prior to legislative appropriations or specific authorizations for the construction and equipping of such projects.

"The Legislature hereby declares that the policy of the State of Texas in regard to projects constructed under the provisions of this Act shall be to provide requisite physical facilities for the operation of State government in an architectural form which will represent the dignity of the State of Texas and which shall be aesthetically pleasing. Designs shall adhere to established construction practices and utilize materials, methods and equipment of proven dependability to the end that projects shall be economical to construct, operate and maintain."

Section 3 of Article 678f provides certain exceptions not applicable to your request. In addition to the projects excluded by Section 3, Section 4 makes additional exclusions. Section 4 provides in part:

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"In addition to the projects excluded by Section 3 of this Act, it is specifically provided that nothing in this Act shall apply to:

"(A) Projects constructed by or under the supervision of any public authorities created by the laws of this State, or

". . . ."

The powers of the Texas National Guard Armory Board are contained in Title 97A of the Revised Civil Statutes of Texas, 1925, as amended, being Articles 5931-1 through 5931-13, Vernon's Civil Statutes. The general powers of the Texas National Guard Armory Board are stated in Article 5931-4, as follows:

"The board shall constitute a public authority and a body politic and corporate and shall possess all powers necessary for the acquisition, construction, rental, control, maintenance, and operation of all Texas National or Texas State Guard Armories, including all property and equipment necessary or useful in connection with the armories."

In addition to the general powers of the Texas National Guard Armory Board, Article 5931-5 provides certain specific powers of the Armory Board, as follows:

"The board shall possess but is not limited to the following powers:

". . . .

"(2) to enter into contracts in connection with any matter within the objects, purposes or duties of the board. . . .

". . . .

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"(7) to construct buildings on any of its real property, whether held in fee simple or otherwise, and to furnish and equip the same and to hold, manage and maintain all of said property. . .

"(8) from time to time, to borrow money, and to issue and sell bonds, debentures, and other evidences of indebtedness for the purposes of acquiring one or more building sites and buildings, and for the purpose of constructing, remodeling, repairing, and equipping one or more buildings, . . .

". . ."

Articles 5931-4 and 5931-5, Vernon's Civil Statutes, are articles dealing specifically with specified powers of the Texas National Guard Armory Board, while Article 678f, Vernon's Civil Statutes, applies to State building construction generally. Also, the provisions of Articles 5931-1 through 5931-13 were enacted subsequent to Article 678f. Furthermore, Section 4 of Article 678f specifically excludes projects constructed by or under the supervision of any public authority created by the laws of this State. The Texas National Guard Armory Board by statutory definition (Article 5931-4) is such public authority.

You are therefore advised that the Armory Board has the power and authority to act independently of the State Building Commission on the items and activities referred to in your request, namely, the development of armory construction and related projects; the selection of a qualified registered architect or engineer and awarding an architect-engineer contract for design and construction supervision of armory and related projects; and the awarding of construction contracts on the basis of open-market sealed bids for armory construction and related projects.

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In answer to your last question, you are advised that the Comptroller of Public Accounts may legally draw warrants, payable from funds in the State Treasury, appropriated to the Armory Board for such purposes in the payment of such services and/or contracts.

S U M M A R Y

Pursuant to the provisions of Article 5931-4 and 5931-5, Vernon's Civil Statutes, the Texas National Guard Armory Board may act independently of the State Building Commission on the development of armory construction and related projects; the selection of a qualified registered architect or engineer and awarding an architect-engineer contract for design and construction supervision of armory and related projects; and the awarding of construction contracts on the basis of open-market sealed bids for armory construction and related projects.

The Comptroller of Public Accounts may legally draw warrants, payable from funds in the State Treasury, appropriated to the Armory Board for such purposes in the payment of such services and/or contracts.

Yours very truly,



CRAWFORD C. MARTIN

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APPROVED:
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